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7

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO

10 HUBB SYSTEMS, LLC,

11 Plaintiff,

12 vs.

13 MICRODATA GIS, INC.,

14 Defendant.  
15

Case No.: C07-02677 BZ

**DECLARATION OF SCOTT BEISNER  
IN SUPPORT OF PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION**

Date: August 1, 2007

Time: 10:00 am

Courtroom G

Magistrate Judge Bernard Zimmerman

16  
17 I, SCOTT BEISNER, declare as follows:

18 1. I am the Marketing Director of Hubb Systems, LLC, a California limited liability  
19 company ("Hubb"). I make this declaration in support of Plaintiff Hubb's motion for a  
20 preliminary injunction against Defendant Microdata GIS, Inc. ("Defendant"). I have personal  
21 knowledge of the facts contained in this declaration and, if called as a witness, I would testify  
22 competently thereto.

23 2. Since approximately 1989, Hubb, or its predecessor in interest, has openly and  
24 continuously used the trade name and mark "DATA911" in connection with its sale of goods to  
25 the public safety community, including mobile computing and mapping system products, digital  
26 video processing units, hand-held devices, software programs including computer aided  
27 dispatch (CAD) and automatic vehicle location (AVL), and other customized systems.  
28

1           3.     Hubb has marketed its products and services throughout the United States, and  
2 routinely attends numerous public safety tradeshows attended by numerous law enforcement  
3 other public safety agencies.

4           4.     I am informed and believe that as a result of Hubb's substantial advertising and  
5 promotional efforts for its goods and services, as well as the high-quality of its goods, Hubb's  
6 "Data911" trade name and mark is widely and favorably recognized and relied upon by the  
7 relevant trade and consuming public as indicating high quality goods and services originating  
8 from Hubb.

9           5.     In order to protect the extensive goodwill symbolized by Plaintiff's mark,  
10 Plaintiff sought and obtained a federal registration for its mark, "DATA911," for computer  
11 software in the field of public safety on the Principal Register of the United States Patent and  
12 Trademark Office Registration Number 2,546,009, with a registration dated March 12, 2002.

13           6.     On April 19, 2007, Hubb filed Combined Declaration of Use and Incontestability  
14 Under Section 8 & 15 (15 U.S.C. §§ 1058 & 1065) for its trademark Registration Number  
15 2,546,009.

16           7.     On May 24, 2007, the Combined Declaration was accepted by the United States  
17 Patent and Trademark Office the registration and therefore achieved incontestable status under  
18 the Lanham Act, 15 U.S.C. § 1065.

19           8.     In or about January, 2007, Hubb first became aware that Defendant had changed  
20 its trade name and mark from "microDATA GIS" to "microDATA 911" and was using this  
21 mark to market goods similar to those sold by Plaintiff, including CAD, AVL and mapping  
22 software, to the public safety community.

23           9.     I am also informed and believe that in 2006, Defendant incorporated Hubb's  
24 "DATA911" trademark into a second URL, "microDATA911.com." That website, in actually,  
25 is a portal site that attracts web traffic searching for "DATA911" and reroutes those users to  
26 Defendant's primary website ("microdatagis.com").

1           10.     A review of Defendant's website indicates Defendant's "xTrakker 9-1-1,"  
2 "xAVL," and "xCAD" software products are substantially similar to Hubb's AVL and CAD  
3 products in terms of capability and functionality. Each respective system operates on CAD  
4 software that permits emergency dispatchers to visually manage and prioritize (using a  
5 computer display) emergency services calls (such as 911) for response, and to direct appropriate  
6 field resources (i.e., police, fire, and medical) to the scene of the incident. Automatic location  
7 identifier systems identify the location of the individual calling 911, and plot that information  
8 (or the location of the actual event, if different) onto a computer map. AVL software (using  
9 GPS technology) simultaneously plots the location and movement of available field resources so  
10 that a dispatcher can immediately determine which available resource is best suited to respond  
11 to the call based on proximity and capability. Each respective system also permits the computer  
12 mapping display to be transmitted to onboard computers in the vehicles of various field  
13 resources allowing the driver to effectively see the same display as the dispatcher.

14           11.     As described above, Hubb and Defendant's respective CAD and AVL products  
15 are very similar in capability and functionality, and therefore are marketed to and compete for  
16 the business of the same public safety agencies. The channels used by Hubb and Defendant to  
17 market their respective goods to the public safety community overlap substantially. Both parties  
18 focus on exhibiting their respective goods and services at public safety tradeshow and  
19 conventions. In particular, Hubb and Defendant target conventions and tradeshow organized  
20 by the Association of Public Safety Communications Officials ("APCO") -- an entity that has  
21 multiple conventions worldwide and attracts decision-makers who determine what public safety  
22 products to purchase.

23           12.     In 2007 alone, Hubb and Defendant have already attended or will attend many of  
24 the same public safety conventions, including the following:

- 25           • On January 29-30, 2007, Defendant exhibited at the 26<sup>th</sup> annual conference of  
26 the California Chapter of the National Emergency Number Association  
27 (CalNENA) in Garden Grove, California (Booth# 48). Hubb also exhibited a  
28 booth at this exhibition (Booth# 44).

- On February 26 through March 1, 2007, Defendant exhibited at the APCO (Association of Public Safety Communications Officials ) Western Regional Conference in Long Beach, CA (Booth# 532). Hubb also exhibited a booth at this exhibition (Booth#211).
- On May 20-25, 2007, Defendant exhibited at the Florida APCO/NENA Conference in Miami, Florida. Hubb also exhibited a booth at this exhibition.
- On June 9-12, 2007, Defendant exhibited at the annual conference of the National NENA 9-1-1 Conference in Charlotte, North Carolina (Booth# 712). Hubb also exhibited a booth at this exhibition (Booth# 832).
- On August 5-9, 2007, Defendant will exhibiting at the APCO International Conference in Baltimore, MD (Booth# 2107). Data911 also has a booth at this exhibition (Booth#2143). Attendees from all over the nation and world attend this show including representatives from California.


13. In addition to exhibiting at the same tradeshow, Hubb and Defendant's exhibition booths are sometimes located in direct proximity to one another. For instance, at the 26<sup>th</sup> annual conference of the CalNENA tradeshow, on January 29-30, 2007, Defendant and Hubb's exhibition booths were located in proximity to each other in the same aisle (Booth #s 44 and 48). A true and correct copy of the floor plan for the 26<sup>th</sup> annual conference of the CalNENA tradeshow is attached hereto as Exhibit A. A true and correct copy of an excerpt from Defendant's website reflecting the future tradeshow Defendant plans to attend as attached hereto as Exhibit B.

14. Hubb and Defendant have, in prior years, attended many of the same public safety tradeshow and conventions. Tradeshow Exhibitor lists for various APCO tradeshow in 2005 and 2006 establish that prior to 2007, Defendant exhibited itself as "microDATA GIS," and not "microDATA911." As reflected in Exhibit A (described above), Defendant, starting in 2007, began exhibiting itself as "microDATA911" rather than "microDATA GIS." In contrast, Hubb has consistently held itself out as "DATA911" at tradeshow and conventions. True and correct copies of excerpts from Exhibitor Lists for APCO tradeshow occurring in 2005 and 2006 are collectively attached hereto as Exhibit C.

15. Hubb has spent years developing and cultivating goodwill under the trademark "DATA911." Hubb fears that Defendant's continued use of its "microDATA911" mark in its

1 URL ("microDAT911.com") and at public safety tradeshow will cause significant confusion in  
2 the mind of the public about the source of goods being sold under the "DATA911" mark. Hubb  
3 is further concerned that Defendant's use of the mark will irreparably damage Hubb's business  
4 through lost sales due to confused consumers and a tarnished reputation caused by inferior  
5 products.

6 I declare under penalty of perjury as set forth under the laws of the State of California  
7 that the foregoing is true and correct and that this declaration was executed on June 20, 2007, in  
8 Oakland, California.

9  
10   
11 Scott Beisner

**EXHIBIT A**



**EXHIBIT B**





# microDATA

Together, we're changing  
the world of 911

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## NEWS/EVENTS

### Trade Shows

### Press Releases

### Technology Seminar

### eNewsletters

## Trade Shows

Visit us at these 2007 Trade Shows:

GIPSC (Geospatial Integration for Public Safety)  
April 15 - 17  
New Orleans, LA  
Booth Number: 302

NJ- NENA Annual Spring Conference  
April 17 - 18  
Atlantic City, NJ  
Booth Number: 402

Mississippi APCO/NENA  
April 29 - May 2  
Tupelo, MS

2007 APCO Gulf Coast Regional Conference  
May 14 - 17  
Nashville, TN  
Booth Number: 104

Florida APCO/NENA Conference  
May 20 - 25  
Miami, FL  
Booth Number: 504

26th Annual NENA 9-1-1 Conference  
June 9 - 14  
Charlotte, North Carolina  
Booth Number: 712

ESRI International User Conference  
June 18 - 22  
San Diego, CA  
Booth Number: 1531

Washington State APCO Conference  
June 27 - 29  
Wenatchee, WA  
Booth Number: 48

APCO International Conference and  
Exposition  
August 5 - 9  
Baltimore, MD  
Booth Number: 2107

Kentucky Emergency Services Conference  
September 4 - 6  
Owensboro, KY

Tennessee Emergency Number Association  
Annual Conference  
September 9 - 12  
Gallatinburg, TN

Oregon APCO/NENA Annual Training  
Conference & Trade Show  
September 11  
Welches, OR

Pennsylvania NENA Conference  
September 12 - 14  
State College, PA

Georgia NENA Fall Conference  
October 8 - 12  
Athens, GA

Alabama NENA Gulf Coast 9-1-1 Conference  
October 14 - 17  
Orange Beach, AL

Illinois 911 Conference  
October 21 - 24  
Springfield, IL

South Carolina NENA/APCO  
October 25 - 27  
Myrtle Beach, SC

Wisconsin NENA (WINENA)  
October 28 - 31  
Wisconsin Dells, WI

APCO Atlantic Chapter Conference  
October 29 - 31  
Hartford, CT

### Presentations

### Presentations

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microDATA 911 1016 U.S. Route 5 St. Johnsbury, VT 05819 800.722.6653 802.748.5503 802.748.5447 fax sales@microdata911.com

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**EXHIBIT C**

APCO WESTERN REGIONAL CONFERENCE MARCH 12-15, 2006 PORTLAND, OR OREGON CONVENTION



If you were here in 2000,  
you're going to want to make  
sure you come back for  
another *splash* in 2006.

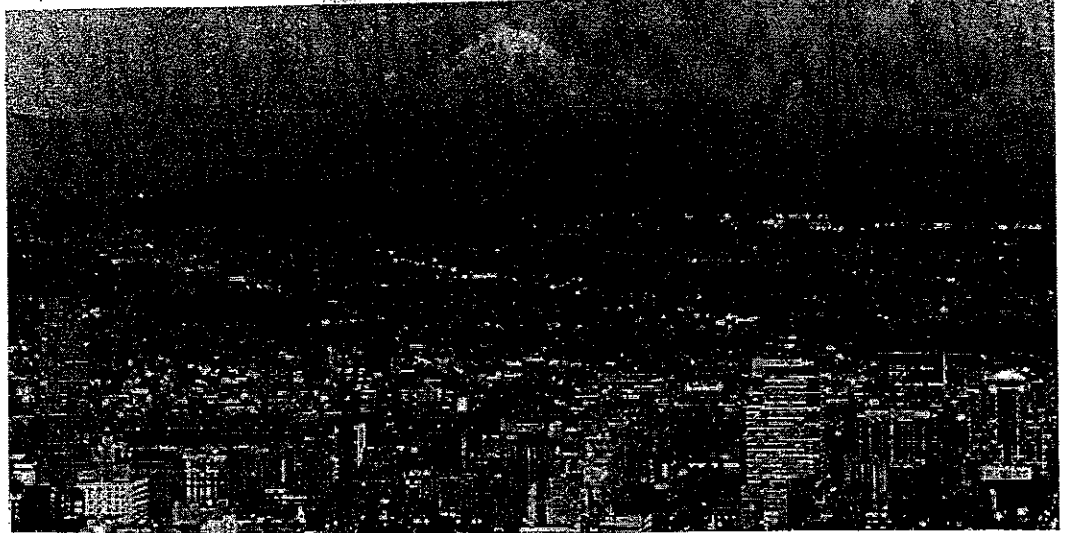
#### Exhibits Committee Chair

Larry Hatch

(503) 690-4911 x207

email: lhatch@wccca.com

fax: 503-531-0186



[Home Page](#) | [Conference Hotel](#) | [Conference Highlights](#) | [Oregon APCO/NENA Website](#)

## 2006 APCO Western Regional Conference

### Exhibitor Information

Booths are 10'x10' each with 8' backdrop and rails. Rental fee includes one draped table, two side chairs, wastebasket, and sign.

Two full registrations and two exhibits only passes are included with each booth space rental.

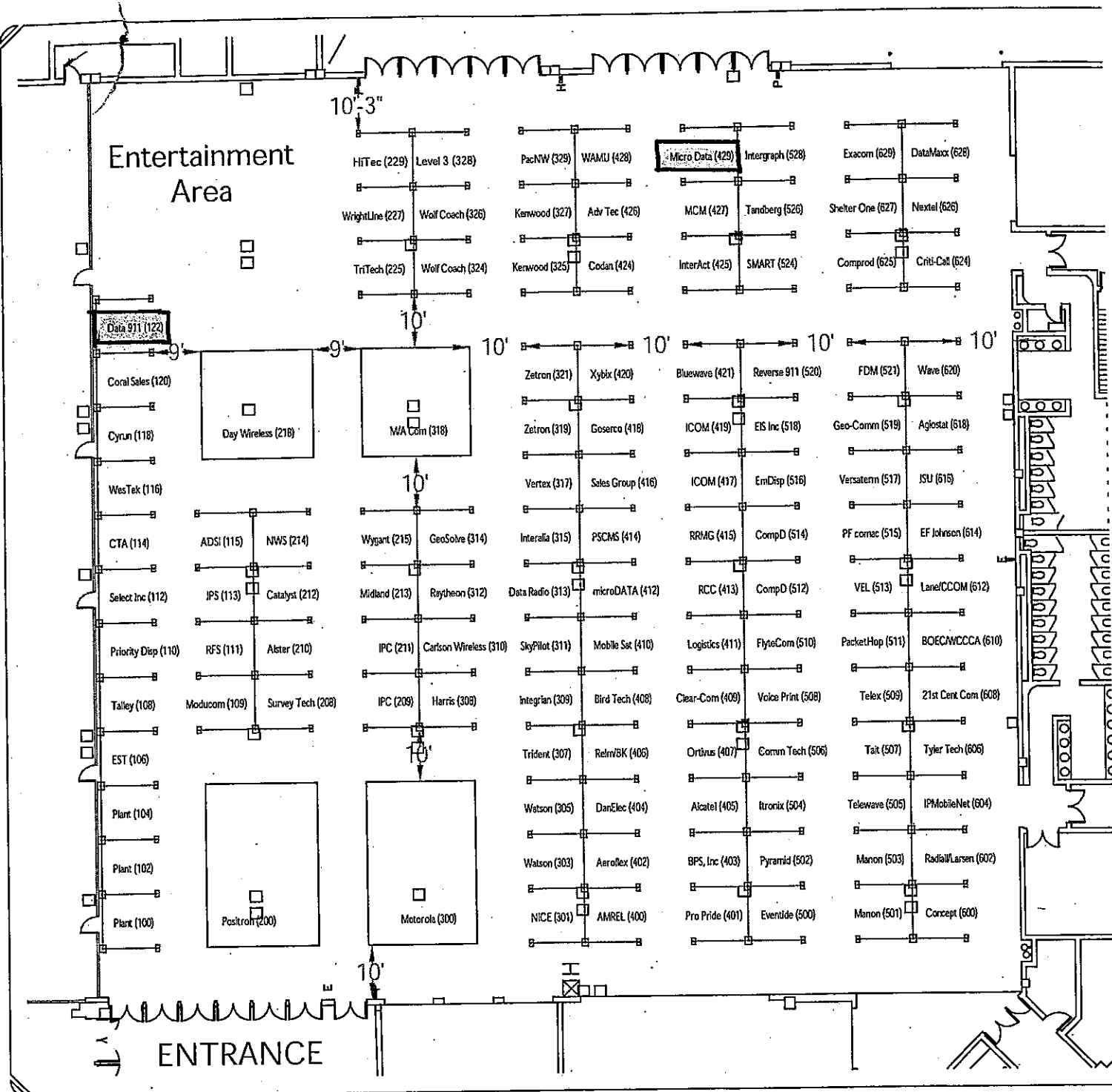
The exhibit area aisles are carpeted, but not the area inside the booth.

The current layout and exhibitor list is [available here](#) (pdf).

[Get adobe reader here](#)

For the complete exhibitor contract and exposition rules and regulations [click here](#) (word).

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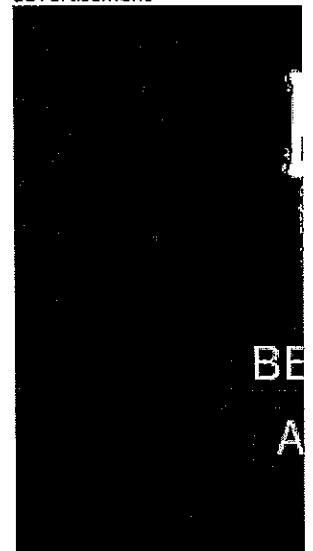
Home » **APCO 2005** exhibitors

## APCO 2005 EXHIBITOR LIST

## APCO 2005 EXHIBITOR LIST

<u>Company</u>	<u>Booth</u>
1-800-BOARDUP	1561 1520
1Call, A Division of AMTELCO	1744
800MHz Transition Administrator	314
9-1-1 MAGAZINE	419
AC Data Systems Inc.	618
AC DC Industries	1850
ADSI	515
Advanced Charger Technology	614
Advanced Concepts Inc.	221
Advancetec Industries Inc.	112
Advantage Telcom	110
AEA Technology Inc.	918
Aeroflex	539
Agiosat Global Communications	211
AGL Magazine	

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advertisement

## APCO 2005 Exhibitor List

CODY Systems	1000
Cohda Wireless Pty Ltd.	1830
Comfort Telecommunications	209
Commtech	1723
Computer Information Systems	710
Comtelco Industries Inc.	1419
Concept Seating Inc.	1425
Concepts To Operations Inc.	820
Contact Wireless/Notify	1240
Criticall Pre-Employment Testing Software	617
Crown Point Ltd.	1241
CTA Communications	449
CTI Products Inc.	1645
CVDS Inc.	1121
CYRUN	317
Daniels Electronics Ltd.	713
Data 911	1323
DataLogic International	658
Datamaxx Group	1531
Dataradio Corp.	1222
Datron World Communications	905
DCC (Dialogic Communications Corp.)	454
Deccan International	1415
Dekolink Wireless Ltd.	1822
Dept. of Homeland Security Office of State & Local Gov't	1747
Dept. of Homeland Security/National Comm. Systems	1002
Digital Data Technologies Inc.	1237
Digital Voice Systems Inc.	1740
Dispatch Products Co.	1543
Dream Box	1216
Dynamic Instruments	306
EADS TELECOM	1739
EFJohnson Co.	1015

## APCO 2005 Exhibitor List

Mentor Engineering Inc.	1646
Mercom Systems	1109
microDATA GIS Inc.	1841
Microslate Inc.	1100
Microwave Data Systems	911
Microwave Networks Inc.	1844
Microwave Radio	313
Midland Radio	208
Miller Building Systems Inc	631
Mindbank Technical Solutions	1340
Mobile Radio Technology, a Primedia Publication	219
Mobile Satellite Ventures	207
Moducom	1624
Motorola	725
Multiplier Industries Corp.	521
NARDA Safety Test Solutions	906
National Public Safety Info. Bureau	1617
Natl. Law Enforc./Corrections Tech Center	417
Network Innovations	1417
NetworkOmni	108
New World Systems	1247
NewTel Wireless Engineering	1547
Nextel Communications	1428
NICE Systems Inc.	937
Niche Technology Inc.	811
Nine One One Inc.	1555
Nortel	413
Northrop Grumman	439
NovaRoam	1210
Oldcastle Precast Inc.	354
OnStar	1147
Otto Communications	707
PacketHop	218

**PROOF OF SERVICE - F.R.C.P. §5**

I, the undersigned, declare: I am employed in the County of Alameda, State of California. I am over the age of 18 and not a party to the within action. I am employed by Fitzgerald Abbott & Beardsley, located at 1221 Broadway, 21<sup>st</sup> Floor, Oakland, CA 94612. I am readily familiar with this firm's business practice of processing of documents for service.

I hereby certify that on **June 22, 2007**, a true and correct copy of the following document(s) was filed electronically:

**DECLARATION OF SCOTT BEISNER IN SUPPORT OF PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION**

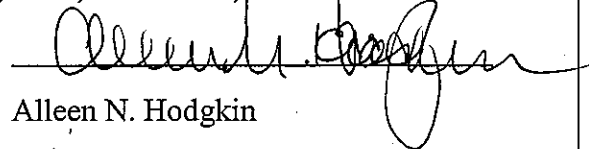
Notice of this filing will be sent by operation of the United States District Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties listed below will be served by the method indicated:

**R. Prescott Jaunich**  
**DOWNS RACHLIN MARTIN PLLC**  
 199 Main Street, P. O. Box 190  
 Burlington, Vermont 05402  
 Telephone: 802-863-2375  
 Facsimile: 802-862-7512  
 Email: [sjaunich@drm.com](mailto:sjaunich@drm.com)

**Counsel for Defendant microDATA GIS,  
Inc.**

<b>X</b>	U.S. Mail - By placing a copy of said document(s) in a sealed envelope with postage thereon fully prepaid, and depositing said envelope with the U.S. Postal Service, following this firm's business practices.
	Federal Express - By placing a copy of said document(s) in a sealed pre-paid overnight envelope and deposited with Federal Express, following this firm's business practices.
	By Personal Service - I caused such envelope to be delivered by hand on the office(s) of the addressee(s).
	Facsimile - By placing a true copy thereof into a facsimile machine to the fax number stated above, as evidenced by the attached transmission report.

I declare under the penalty of perjury under laws of the State of California that the foregoing is true and correct. Executed on **June 22, 2007**, at Oakland, California.

  
 Alleen N. Hodgkin